

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION**

Roger Leon Kelley,)
Plaintiff,) Civil Action No.: 0:18-cv-00167-JMC
v.)
Al Cannon, *Sheriff Director; Chief Executive*)
Tom Cusimano, *Summitt Food Service,*)
Defendants.)

)

ORDER

Plaintiff Roger Leon Kelley, proceeding *pro se*, filed this action under 42 U.S.C. § 1983. (ECF No. 13.) This matter is before the court on Plaintiff's Amended Complaint, which alleges that Summitt Food Services has served inadequate amounts of food that fall below the federal minimum standards for caloric intake for inmates. (*Id.* at 7.) He also alleges that much of the food is spoiled, and it is often served late. (*Id.*) Separately, Plaintiff alleges the detention center has black mold, mildew, and poor ventilation that is hazardous to humans and known by Defendant Al Cannon. (*Id.* at 5-6.) Finally, Plaintiff claims these deprivations are an attempt to get a guilty plea out of an innocent person, referring to himself. (*Id.* at 9.) He alleges these deprivations are the result of reckless and deliberate indifference to his rights and amount to punishment. (*Id.* at 6-7.) He purports to raise these claims pursuant to the Eighth and Fourteenth Amendments pursuant to 42 U.S.C. § 1983 and he seeks damages for his injuries. (*Id.* at 4, 9.) The Magistrate Judge's Report and Recommendation recommends that the Amended Complaint be summarily dismissed without prejudice and without issuance and service of process, stating that Plaintiff fails to state a claim upon which relief can be granted against Defendants. (ECF No. 19.)

The Magistrate Judge's Report and Recommendation is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the Magistrate Judge's recommendation or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The parties were advised of their right to file objections to the Report and Recommendation. (ECF No. 19 at 8.) However, neither party filed an objection to the Report and Recommendation within the prescribed time limits. In the absence of objections to the Magistrate Judge's Report and Recommendation, this court is not required to provide an explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Rather, "in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note). Furthermore, failure to file specific written objections to the Report and Recommendation results in a party's waiver of the right to appeal from the judgment of the District Court based upon such recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

After a thorough review of the Report and Recommendation and the record in this case, the court **ACCEPTS** the Magistrate Judge's Report and Recommendation (ECF No. 19) and

incorporates it herein. Therefore, the court **DISMISSES WITHOUT PREJUDICE** Plaintiff's Amended Complaint (ECF No. 13).

IT IS SO ORDERED.



United States District Judge

April 17, 2018
Columbia, South Carolina